

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Inquiry Concerning the Deployment of)	
Advanced Telecommunications Services)	CC Docket No. 98-146
Capability to All Americans in a Reasonable)	
and Timely Fashion, and Possible Steps)	
to Accelerate Such Deployment)	
Pursuant to Section 706 of the)	
Telecommunications Act of 1996)	

**REPLY COMMENTS OF THE
COMMERCIAL INTERNET EXCHANGE**

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TABLE OF CONTENTS

	<u>PAGE</u>
Introduction And Summary	1
Discussion	4
I. The Meaning Of "Advanced Telecommunications Capability"	4
II. Advanced Telecommunications Capability is Being Deployed to All Americans.....	5
III. ISPs and CLECs are Attempting to Deploy Advanced Telecommunications Capability in a Reasonable and Timely Manner.	9
IV. Recommendations for Commission Actions to Support Deployment of Advanced Telecommunications Capability	10
Conclusion	11
APPENDIX I.....	New Networks Institute Report

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INTRODUCTION AND SUMMARY

The Commercial Internet eXchange Association ("CIX"), by its attorneys, files these comments on the *Second Notice of Inquiry* into the deployment of advanced telecommunications capability (*Second NOI*) pursuant to Section 706 of the 1996 Telecommunications Act (*1996 Act*). CIX is a trade association that represents over 150 Internet Service Providers (ISPs) who handle over 75% of the United States' Internet traffic.¹

Internet service providers, including CIX members, promote the availability of efficient, innovative and market-based Internet services to the public. In its comments filed in this proceeding, CIX urged the Commission to continue to implement Section 706 in a careful, thoughtful manner, guided by Congress's clear support for competition in the local

¹ The views expressed herein are those of CIX as a trade association, and are not necessarily the views of each individual member.

telecommunications market, and the Commission's policy of "unregulation of the Internet."² In these reply comments, CIX reiterates these points and specifically focuses upon the incumbent local exchange carriers' (ILECs') arguments that amount to no more than a thinly veiled attempt to avoid the requirements that Congress placed on them in Sections 251 and 271 of the 1996 Act. By making these arguments, the ILECs essentially request that the FCC contradict the Congressional intent embodied by the 1996 Act by permitting the ILECs to avoid truly opening their markets to competition.

According to the *Chevron* doctrine,³ federal regulatory actions must comport with Congress's intention for the underlying statute: "the plain meaning." The plain meaning of Section 251⁴ indicates a clear congressional intent to develop a competitive market for all forms of telecommunications. In Section 271, Congress clearly enunciated the only permissible means of ILEC entry into interLATA services.⁵ ILEC promises of good behavior do not overcome a clear statement by Congress. Moreover, the FCC does not have the authority to make regulatory changes that contradict a clear statement of Congressional intent.

CIX believes that so long as ISPs, CLECs, and end-users lack real alternatives to the ILEC's local network facility, the Commission must ensure that ILECs do not leverage their dominance in the voice telecommunications market to capture the advanced telecommunications market. Specifically, the FCC must not permit ILECs to steer or force consumers to accept ILEC and ILEC-affiliates services, including ISP services. Moreover, the FCC must not be coerced

² See generally *The FCC and the Unregulation of the Internet*, OPP Working Paper No. 31, Office of Plans and Policy, Federal Communications Commission, (Jul., 1999).

³ Chevron U.S.A. Incorporated v Natural Resources Defense Counsel, 467 U.S. 837 (1984)

⁴ 47 U.S.C. § 251.

⁵ 47 U.S.C. ¶ 271

into adopting the policies proposed by the ILECs and their affiliated associations that will ultimately restrict the number of competitors in the industry, consequently restricting consumer choice of internet and advanced telecommunications service providers. The FCC must prevent ILECs from discriminating in favor of their affiliated ISPs, deploying network architecture that will increase the barriers to CLEC entry, misusing their access to customer propriety network information (CPNI) to gain competitive advantage, or taking advantage of their market position to restrict competitive access and use of the public switch telecommunications network.

CIX attaches, in Appendix I of this reply, the New Networks Institute's Summary Report of the ISP Survey (*New Networks Survey*).⁶ The data in this report directly contradicts ILEC arguments that ILEC ownership of local exchange facilities awards "no competitive advantage" in providing advanced services.⁷ *The New Networks Survey* details the problematic and anti-competitive ILEC behavior that is still occurring. The *Survey* indicates that these problems are not isolated and that there is a clear pattern of ILEC abuse throughout the country. New Networks' findings indicate that small ISPs are receiving substandard customer service from the ILECs. In addition, the *New Networks Survey* indicates that the majority of small ISPs in secondary and rural markets do not have a choice of service providers and are being squeezed out of the market by the ILECs' affiliated xDSL and ISP offerings. The survey also indicates that state and local public service commissions have been so far unable to prevent ILEC abuses. Residential and small business internet users, in particular, are suffering harm as a result of the ILECs' intransigence with regard Sections 251, 271, and the FCC's *Local Competition*

⁶ See *Summary Report of the ISP Survey*, New Networks Institute, (Apr. 4, 2000) (attached at Appendix I).

⁷ BellSouth comments at 5.

regulations.⁸ Thus, in contradiction to the ILECs' arguments that the regulatory requirements of Sections 251 and 271 ultimately delay the widespread deployment of advanced telecommunications capability, the attached *New Networks Survey* indicates it is actually the ILECs' own behavior that frustrates the deployment of advanced telecommunications services to all Americans.

DISCUSSION

I. The Meaning Of "Advanced Telecommunications Capability."

CIX agrees with the majority of commentors that the definition of advanced telecommunications capability should embrace services such as asymmetric digital subscriber line (ADSL) transmission service, as well as those provided through cable and satellite transmission systems.

⁸ See 47 U.S.C. §§ 251, 271. See also *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999) (*Local Competition Third Report and Order*).

II. Advanced Telecommunications Capability is Being Deployed to All Americans.

CIX strongly disagrees with ILEC and ILEC-oriented association arguments that there is an imminent backbone shortage.⁹ As the balance of the comments convincingly argue, not only is there no shortage of fiber backbone throughout the country, but within the next few years, that backbone will be augmented by coast-to-coast satellite transmission systems. ILEC arguments to the contrary are merely self-serving attempts to avoid the requirements imposed upon them by Sections 251 and 271 and have no factual justification.

The reports and arguments contained in iAdvance's comments are particularly misleading. Specifically, iAdvance purports that allowing ILECs to invest and compete in the interLATA data market, without requiring their compliance with Section 271, will somehow "help close the rural-urban broadband digital divide. iAdvance's comments also imply that there is a looming "bandwidth crises"¹⁰ that can only be forestalled by excepting the ILEC provision of advanced telecommunications capability from the pro-competitive requirements of the 1996 Act. The concept of an impending "bandwidth crisis" is no more than a Trojan Horse. As the balance of the comments clearly indicate, the backbone market is already fully competitive. Moreover, ISPs themselves are increasing their backbone capacity in anticipation of growing demand.¹¹

⁹ See GTE comments at 11-13, iAdvance comments at 3-6, U S West comments at section IV.

¹⁰ iAdvance comments at 6.

¹¹ UUNET recently announced that it plans to upgrade its entire U.S. network to full line-rate OC-192 speeds. A single OC-192 circuit can transmit the entire contents of the Library of Congress from Washington D.C. to New York in seven seconds. See *ISPs Plan Backbone Boost*, Internet.com, ISP News, (Mar. 28, 2000) <http://www.internetnews.com/isp-news/article/0,2171,8_328401,00.html>.

Thus, there is little likelihood that ILEC entry into the backbone facilities market will have a positive effect.

Attached to its comments, iAdvance submitted a report entitled *Breaking the Backbone: The Impact of Regulation on Internet Infrastructure Deployment*, containing a lengthy statistical analysis in support of the argument that, but for pro-competitive regulation, advanced telecommunications capability would already be widely available. This report is based on flawed assumptions and generally outdated data.

Specifically, iAdvance's *Breaking the Backbone* report argues that geographical proximity to a backbone hub, or the lack thereof, is a gating factor currently affecting accessibility to advanced telecommunications capability. This is flatly untrue. End users generally access ISPs through local connections to the ISPs' points-of-presence, and do not connect directly to hubs. Thus, *Breaking the Backbone's* central premise, that permitting ILECs to engage in interLATA service will promote end-user access to advanced telecommunications capability, is faulty and misleading. Moreover, the *New Networks Survey* does not even indicate that ISPs perceive a problem accessing hubs or backbone infrastructure. If the ILECs want to promote end-user access to the Internet and other advanced telecommunications capabilities, they need only cooperate in the provision of the unbundled network elements necessary for the competitive deployment of xDSL and other new services.

In addition *Breaking the Backbone* utilizes out of date, consequently inaccurate, data. Specifically, the data regarding personal income per capita and cities with 100,000 or more inhabitants dates to 1996. More importantly, iAdvance founds its analysis on the available quality of independent LEC access lines, but relies on data dating to December 31, 1996 - merely

months after Congress enacted the Telecom Act of 1996. Thus, the study ignores the effects of four years regulatory development and burgeoning competition.

Upon this faulty statistical foundation, iAdvance basis its argument that federal restrictions on ILEC interLATA transmissions have a chilling effect on local broadband deployment and investment. Essentially, iAdvance argues that ILECs would be more likely to invest in advanced telecommunications capability if they did not have to comply with Congress' intention to develop a competitive telecommunications market. CIX agrees with the majority of commentators that support the opposite proposition: that it is only in response to competition, whether by congressional initiative or the deployment of alternative technologies such as cable and satellite, that the ILECs have finally relented and have begun to deploy networks that can support advanced telecommunication capability. The FCC should not accede to ILEC and ILEC-oriented association arguments that the absence of competition and government support for competitive entry into the telecommunications market will increase the quality and quantity of deployed advanced telecommunications capability.

In the second report submitted by iAdvance, entitled *A 21st Century Internet for all Americans*. iAdvance actually makes arguments that undermine its theory that federal regulations, specifically Section 251 and 271 of the 1996 Act, impede the deployment of advanced telecommunications capability. iAdvance notes that “it costs significantly less for [ILECs] to make the incremental investment to extend the backbone network to rural

communities.”¹² Undoubtedly, the economies of scale available to ILECs providing service to vast regions of the country dictate that they can procure equipment on terms that are more favorable than those available to smaller CLECs. iAdvance does not, however indicate why the ILECs will have an incentive in the absence of competition to pass their equipment savings on to consumers in the form of lower prices, greater functionality, or more widespread deployment, rather than to extract monopoly rents without concern for competition.

Secondly, iAdvance notes that ILECs have a “unique strategic imperative for building these networks in rural communities.”¹³ Undoubtedly, ILECs do have a unique and strategic imperative, at the present time. Their desire to protect their market share compels them to deploy advanced telecommunications capability ahead of their potential competitors. One must wonder, however, what happens to this argument if the FCC or Congress no longer supported competitive entry. Specifically, without the possibility of competitive entry enabled by Sections 251 and 271, there would be nothing left to compel ILECs to deploy advanced services or minimize the consumer prices for advanced telecommunications capability in rural and less profitable markets.

Finally, we emphasize that ILECS can free themselves from the requirements of Section 271 by complying with the requirements of Section 251, in accordance with the regulations enacted by the FCC in the *Local Competition* proceedings. Thus, ILECs “hold the key to their

¹² *A 21st Century Internet of All Americans*, iAdvance, at 5 (Dec. 2, 1999).

¹³ *Id.*

jail cell in their pocket” and need only agree to compete on an equal footing with their fellow competitors in order to attain comparable regulatory treatment.

CIX believes that, despite the ILECs and their affiliated associations’ protests to the contrary, advanced telecommunications capability is being deployed to all Americans, and there is no impending backbone shortage. So long as Congress and the FCC continue to support the establishment of competitive markets by enforcing the regulations currently in effect, further regulatory changes will not be necessary to support the deployment of advanced telecommunications capability to all Americans.

III. ISPs and CLECs are Attempting to Deploy Advanced Telecommunications Capability in a Reasonable and Timely Manner.

CIX agrees with the majority of commentors that advanced telecommunications capability is being deployed in a reasonable and timely manner. CIX emphasizes that the only factor apparently inhibiting the deployment advanced telecommunications deployment is the ILECs’ stubborn refusal to fully comply with the requirements of Section 251 and to remove the barriers to competition. Moreover, the ILECs purporting to deploy network capability in support in the deployment of advanced telecommunications capability may actually be attempting to leverage their current control over network architecture to foreclose the opportunity for competitive carriers to enter the market. Specifically, SBC with its Project Pronto is attempting to deploy proprietary architecture for their digital loop carrier (DLC) deployment that could foreclose the opportunity for competitors to utilize transmission technology alternatives that are

not compatible with the specific type of equipment that SBC has chosen to deploy.¹⁴ We recognize that the FCC has undertaken this issue in a separate proceeding. We recommend that the FCC utilize this proceeding to demonstrate that it will not support the ILECs' efforts to utilize their current control over network technology to create a new barriers to competition.

Finally, CIX reiterates its recommendation that the FCC not submit to the ILEC's arguments that they should be permitted to bundle advanced telecommunications capability with other products and services. Doing so will create new opportunities for anti-competitive behavior that will undermine the FCC's and Congress' support for CLEC and ISP market entry.

IV. Recommendations for Commission Actions to Support Deployment of Advanced Telecommunications Capability.

As discussed above, CIX opposes any ILEC effort to subvert Section 706 into a means of avoiding their unbundling and pro-competitive obligations pursuant to Sections 241 and 271. The FCC need not support the weakening of those requirements in order to induce the ILECs to do what they are already free to do. Moreover, we note that ILECs can retain their ability to act in an anti-competitive manner, even after they receive Section 271 approval. The FCC's willingness to act swiftly and firmly in response to anti-competitive behavior on behalf of the ILECs, regardless of Section 271 approval, is the best defense against a resurgence of market domination by monopolistic telecommunications carriers. We recommend that the FCC continue to develop its enforcement mechanisms, and diligently monitor the development of a competitive market for advanced telecommunications capabilities.

¹⁴ See *Common Carrier Bureau Seeks Comment on SBC's Request for Interpretation, Waiver, or Modification of the SBC/Ameritech Merger Conditions*, CC Docket No. 98-141, ASD File No. 99-49, DA 00-335 (rel. Feb. 18, 2000).

CONCLUSION

CIX urges the Commission to continue to support the deployment of advanced telecommunications capability ensuring freedom of ISP and carrier choice for consumers, by insuring that ILEC local facilities are fully opened for competition, and remain so.

Respectfully submitted,

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APPENDIX I

**New Networks Institute
Summary Report of the ISP Survey**

SUMMARY REPORT OF THE ISP SURVEY

Presented by

New Networks Institute

4/4/00

Table of Contents

Executive Summary	3
The History and Reason for the Survey	5
Scope and Methodology	5
Survey Details (Appendix 1)	
1.0 Overall Ratings of the Bell Phone Companies and Service Quality Issues	6
1.1 Bell is Delivering Sub-Standard Customer Services	6
1.2 Issues of Service Quality	7
2.0 Using a Competitive Local Exchange Company (CLEC)	8
2.1 CLECS ARE RATED AS A BETTER CHOICE OVER THE BELLS.	9
3.0 Digital Subscriber Line Issues	11
3.1 The First Problem For ISPs: Just Getting ADSL from the Bell	11
3.2 Predatory Pricing By The Bell Company Is An Inhibitor To ISPs Offering DSL	12
3.3 There are a Litany of Problems for ISPs Offering DSL	12
4.0 Harm to Internet Providers	15
4.1 Effect on the ISP Customer due to Problems with the Local Bell	16
5.0 Taking Actions Against the Bells	16
5.1 The Problem Of Getting Justice For The ISP Is Unfortunately, Multifaceted	16
5.2 The PUC Is Not Up To The Challenge Of Taking On The Bells.	17
5.3 The ISP May Not Be The Customer of Record	17
5.4 In Some Cases, The PSC Simply Doesn't Have Enough Staff.	17
5.5 In Most Cases It Simply Isn't A Fair Fight	18
5.6 Even The Legal Issues Are Unclear To The Public Service Commissions	18
6.0 Taking Legal Actions Against the Bells	19
<i>Appendix 1 Definitions and Abbreviations</i>	20
Appendix 2 The Survey Details	21

- 1) Total Respondents
- 2) The Respondents
- 3) States Covered
- 4) RBOC Representation
- 5) Largest State Accounting

Executive Summary

Internet Service Providers (ISPs) are mostly comprised of a rare breed of entrepreneurs who, at their own expense, clearly saw the need to supply customers with the foundations of the Digital Age -- Internet and web service provision and everything from e-mail to the creation of web sites.

With more than 7,000 providers throughout the US, small and mid-sized ISPs represent almost half (46%) of all online customers (source: Washington Post), and it has been this group that has been the real innovators of our Digital Future, not the monopolies who supply local phone service, such as the Bell companies or GTE.

However, based on the findings of this survey, the local Bell Companies and GTE are causing serious harm to the Internet Providers and their customers. This is causing not only a loss of revenues to competitors, but is also stifling competition and the growth of America's Digital Future.

Primary Findings:

- **SMALL ISPs Are Receiving Substandard Customer Services From The Local Phone Company.** Across the board, the ISPs rated their services as “sub-standard” in virtually all categories, and there was only 8% of ISPs who gave the Bell an overall passing grade (above 6.5 out of a possible 10). And though the highest scores were for the “friendliness of telephone representatives”, on a scale of one to ten, the survey respondents gave the Bells an overall average of just 3.7, a seriously failing grade.
- *There is a Litany of Problems Being Created by Bells According to the respondents, 62% of ISPs claim that phoneline problems happen frequently or continually, 57% state that trying to have orders fulfilled takes months, and this includes even get a straight answer about the installation or the price of service, while 46% believe that even when something is advertised, there is no guarantee that the ISP can order it. And of the phonelines that are already installed, 46% state it can take days for repairs.*

- **These Problems Are Not Isolated. There is a Clear Pattern of Abuse Throughout The Entire Bell System And GTE.** From Texas to California, New York to Florida, of the 50 states represented, the problems encountered are happening throughout the Bell System and GTE
- **DSL Deployment Is Being Stifled By The Bells** About 40% of the ISPs state that they offer DSL services or are planning to in the near future. However, there are a litany of problems facing the marketing of DSL and the interface with the Bell companies. For example,
 - 71% of ISPs have had lost orders by the local phone company
 - 59% have had their customers “slammed” by the Bell (meaning that their customer was changed over to the local Bell without their permission)
 - 63% of ISPs have had the Bell recommend their product over their current ISPs’ products.
 - 53% have had their customers told they wouldn’t have problems if they switched to the Bell company product.
- **ISPs That Are Using CLECs (Competitive Local Exchange Companies) Feel That The Competitors Deliver Better Services, But That They Are Also Hampered By The Bell Companies Who Supply The CLEC Access As Well.** Throughout the responses, those who use a CLEC gave the companies almost double the rating of their LEC counterparts. However, as most of the ISPs point out, the CLEC still has to interface with the Bell company and this still causes many problems.
- **The Majority Of Small ISPs In Secondary Markets Across America Do Not Have A Choice Of Providers, And Are Being Priced Out Of The Bell’s DSL.** In many states, non-urban ISPs are still totally dependent on the local Bell to provide services and the majority point out that the Bells has either freezed them out of the market by offering services below cost, or they are not giving the ISP adequate services. (NNI has filed a separate complaint with the New York Attorney Generals office demonstrating that Bell Atlantic (like the other Bells) are subsidizing their DSL services and offering the service below the costs to competitors.
- **The Majority Of ISPs Are NOT Receiving Adequate Help From Their Local Public Service Commissions To Stop Bell’s Abuses, Even Though The Bells are Violating The Telecom Act of 96 And State Laws.** Almost 75% of ISPs have attempted to get help from their state Commissions regarding their problems with the local Bell. However, the majority, 63% of those who approached the Public Service Commission to get help got no results. **However, it should be noted that these violations cost the Internet providers both a loss of revenues, including the loss of customers, as well as the damaging of the company’s reputation.**
- **Customers of the Internet Providers are Being Harmed by the Bells Actions.** When phonelines aren’t working or the phone company doesn’t show up for an installation, this has

a direct impact on the customers who are using the ISPs' services. (NNI has filed a separate complaint with the New York Attorney General's office about the Bells' impacts on DSL customers who use an independent ISP.)

Conclusion: With 89% of ISPs believing (and documenting) that they are being harmed, NNI believes that the FCC and the states should immediately create a "code of standards and conduct" that protects Internet Providers and their customers from harm. This includes the enforcement of laws currently in place, as well as the payment of penalties and fines that compensates the ISP and their customers for the harm the Bells are creating with their sub-standard customer services and phone provisioning.

The History And Reason For This Survey

In 1998, New Networks Institute launched a pilot survey to determine the relationship between Internet Service Providers and their local phone provider-- the Bell companies and GTE. Based on the disturbing findings from this pilot, the Commercial Internet eXchange (CIX) on behalf of the United States Internet Service Providers Alliance (USISPA) sponsored a survey with additional questions at the end of 4th quarter 1999.

Survey Methodology

The survey was based on a random mailing from the USISPA to Internet Providers, November 1999, requesting them to fill out an online survey. Also, to increase response rates, the USISPA posted an invitation to online lists as well as state Internet Provider Associations.

This method helped to make the response process random, therefore representing an accurate sample of the entire industry. However, there are always caveats to any survey, including those that are “self-selecting”, meaning that decision to take the time to fill out a survey is left up to respondents themselves.

Based on other interviews with other ISPs who did not complete the survey, as well some industry findings about the Bell’s treatment of competitors, we believe that the survey mimics the overall Internet Service Provider industry’s relationship with the Bell companies.

Survey Details

Appendix 1 highlights the survey details, including number of respondents, size of the companies, states covered and representation of the Bell companies (and GTE).

1.0 Overall Ratings of the Bell Phone Companies and Service Quality Issues

1.1 The Bells are Delivering Sub-Standard Customer Services

Across the board, the ISPs rated their services as “sub-standard” in virtually all categories, and only 8% of ISPs gave the Bell an overall passing grade (above 6.5) on a scale of one to ten. And though the highest scores rated the telephone representatives as “friendly”, the survey respondents gave the Bells an overall average of just 3.7, a seriously failing grade.

Summary of Ratings By ISPs for their Local Bell Company

(1 is lowest, 10 is highest)

Overall Rating	3.7
Cost Is Fair	3.0
Bills are easy to Understandable	3.2
Bills are Accurate	3.5
Easy to reach when problems occur	4.2
They do a good Job fixing problems	3.4
Friendly Customer Service and Sales reps.	5.7
Services Lived Up to Promises	3.6

Based on the survey, the primary findings of general customer services are clear. Across the board, ISPs responded that:

- Phonebills are unreadable
- Bills are rarely accurate
- The company rarely fixes problems in a “timely and reasonable” fashion and they are hard to reach.
- The Bells do not keep promises, especially on installation appointments and deadlines.

A NY state ISP who uses Bell Atlantic stated:

“Customer service and callbacks are non-existent and frequently the contact on the phone cannot provide the name of a rep who handles problems, orders or billing and then we never receive a callback. We still have not had a customer service rep assigned after nearly a year without one. . . Constantly shuffled to various different people when trying to get information or order status. Bell Atlantic just sucks.”

A Washington state ISP who uses US West stated:

“Lack of interest in resolving billing disputes; overall communication; cancellation of line(s) order with no apparent reason or communication; etc.”

Meanwhile, another ISP from Washington state added.

“...it is an endless cycle. NOT ONE installation in the past two plus years has been done correctly or on time. Not one. Out of at least 20 orders of various types.”

1.2 Service Quality Issues

This next set of questions asked about the specifics of service quality. Do lines go in and out of service? Does the local company fix the problems immediately or take months, and does the ISP experience line problems of various sorts? The exhibit below highlights the various problems encountered, and the ISP was asked to assign one of four choices.

- Never happened
- Happened a few times
- Happens frequently
- Continuous problems

USING THIS SCORECARD FOR THE QUESTIONS, WE PRESENT THE DATA AS TWO SETS OF INFORMATION. COLUMN A GIVES THE NUMBER OF ISPS WHO FOUND THE PROBLEMS AS “NEVER HAPPENED” OR “HAPPENED A FEW TIMES”, WHILE COLUMN B COMBINES “HAPPENS FREQUENTLY” OR “CONTINUOUS PROBLEMS.” WE’VE ALSO ORDERED THE MATERIAL SHOWING THE MOST PROBLEMATIC AREAS AT THE TOP OF THE EXHIBIT.

According to the respondents, 62% of ISPs claim that phoneline problems happen frequently or continually, 57% state that trying to have orders fulfilled takes months, and this includes even getting a straight answer about the installation or the price of service, Meanwhile 46% believe that even when something is advertised, there is no guarantee that the ISP can order it. And of the lines that are already installed, 46% state it can take days for repairs.

A Litany of Problems from the Bells

	<u>Column A</u> <u>Never/Few</u> <u>Times</u>	<u>Column B</u> <u>Frequent/Continu</u> <u>ous</u>
Line problems of numerous sorts	38%	62%
Trying to order services takes months	43%	57%
Can't get a straight answer about price or installation	44%	56%

Services are advertised but can't be ordered	54%	46%
It takes days for repairs.	54%	46%
They rarely return our calls.	63%	37%
Rates charged to you are higher than the tariffs	73%	27%
Phonelines go in and out of service for no apparent reason	74%	26%
Phonelines won't hunt	84%	16%

A Washington ISP states that they have missed installation and billing problems:

“Serious missed due dates, service billings a nightmare. Billed for discontinued services, adjustments made then undone without notice.”

In Minnesota, an ISP finds that US West's bills are ‘always wrong’.

“Frame relay billing always wrong, Disconnects rarely processed completely. Disconnects not always removed from bill, Bill for new service starts months before circuit is up.”

A Texas ISP using SBC communication has similar problems with our other ISPs

“Billing irregularities, Unknown charges, Unknown/unexplained outages frequent”

Meanwhile, a Colorado ISP states that US West can't supply adequate line quality for 56K modems, and calls just hang up for no reason.

- “Bad trunk quality, unable to connect with modems
- 56K modems connect as low as 16.8K
- Fast busy when customers call between Cos (Central Offices, which are part of the phone and data networks)
- Data calls dropped for 'No' apparent reason”

As one Texas ISP using GTE put it, it can take months just to get basic services that should take a week.

“Over 2 months for a new Channelized T1, finally installed 1 month after due date. Still waiting on 'EXPEDITED' install of fractional T1 to replace lines which go out of service because the GTE switch has a problem that

they can not seem to correct. (ISDN LINES)” (EDITORS NOTE:
Channelized T1 and Fractional T1 are basic network business services.)

Though the other problems mentioned, including “rates charges are higher than the tariffs”, or “phonelines go in an out of service for no reason”, are not “continuous problems”, virtually ALL ISPs experience these problems, though less frequently than the other problems mentioned.

2.0 Using a Competitive Local Exchange Company (CLEC)

One of the primary changes brought on by the Telecom Act of 1996 has been the creation of the competitive local phone companies, known as CLECs. These companies offer a variety of services, but for the most part have focused on delivering data services that are sold to Internet Service Providers.

The Survey found that:

1/3 of ISPs are Using CLECs -- Approximately 1/3 of the respondents are using a CLEC for their services, mostly focused on data and DSL services. However, over ½ of the ISPs do not have a CLEC available or view them as a worse solution, mainly because the CLEC still has to purchase service from the local Bell.

2.1 CLECS ARE RATED AS A BETTER CHOICE OVER THE BELLS.

THE RATINGS FOR CLECS, BASED ON ISPS THAT USE CLECS, ARE ALMOST DOUBLE COMPARED TO THE BELLS.

CLEC RATINGS (On a scale of 1 to 10)

CLEC Overall Rating	5.7
CLEC Cost Is Fair	6.9
CLEC Bills Understandable	6.0

CLEC Bills Accurate	4.8
CLEC Easy Access	5.4
CLEC Fixing Problems	4.8
CLEC Friendly	6.6
CLEC Kept Promises	5.5

However, there is a dark side to this story. As pointed out by numerous ISPs, the CLEC is beholden to the Bell to deliver services in most territories and so, in many cases, the CLEC's rating also reflects the complications created by the Bells.

A Kentucky ISP states that the problems they encounter with their CLEC could be BellSouth's fault.

"Our CLEC pricing is great but the service is horrible. We're not sure, however, if the CLEC is truly to blame or if the problems occurring are caused by the Incumbent (BellSouth)."

An ISP in Texas mentions that the CLEC is dependent on Southwestern Bell (SBC) and coordination between the two is "impossible."

"Better prices, harder working people, however, a CLEC must work with SBC to gain access to the network, and when SBC screws them, they become another layer of confusion. To coordinate both large companies into a cohesive troubleshooting team, in a crises, is impossible."

Two other ISPs stated that this dependence of the CLEC to the Bell holds the CLEC and the ISP "hostage."

An ISP in Kentucky using BellSouth states:

"Most (95%) of CLEC work is resale from ILEC (Incumbent Local phone company), they (CLEC) are held hostage"

While in New Mexico, an ISP wrote:

"Since the CLEC depends on US West for many services, and since US West would like the CLEC's to go away, the CLEC in turn faces many US West problems."

And the majority of ISPs state that they have no alternative but to use their local monopoly phone company for all services.

A Washington state ISP states:

"There are no other choices at all! "

Another Washington state ISP:

“US West is the ONLY LEC here.”

Or another ISP from Maine, using Bell Atlantic:

" There are no other choices, period."

Or yet another from Texas using GTE:

“There are NO CLEC CHOICES!”

In some cases, the ISP has found that the CLEC will have the same or worse problems in dealing with the Bell and so a CLEC just “adds a layer of abstraction and confusion.”

As one ISP from California put it about Pac Bell:

"There are other choices but because the CLECs don't necessarily get any better service out of the ILEC than we do directly, going to a CLEC just adds a layer of abstraction and confusion. This is largely due to the ILECs inability to do things efficiently in the first place but it also functions nicely as monopoly reinforcing behavior so the ILEC is seen as having little incentive to provide quality service to the CLEC."

3.0 Digital Subscriber Line (DSL) Issues

About 40% of the ISPs state that they offer DSL services or are planning to in the near future.

3.1 The First Problem For ISPs: Just Getting ADSL from the Bell.

EDITOR NOTE: There are many flavors of DSL Service. ADSL (Asymmetric Digital Subscriber Line) is the most common sold by the Bells. It is essentially a one-directional service, thus asymmetric.)

The first problem for the ISP is just getting DSL. And as you can see from the quotes below, in many areas the Bells have either priced the competitor out of the market, has not deployed it in specific areas, and/or has misrepresented when it will be available in various areas -- if at all.

This first ISP from Washington using US West, explains how the Bell promised to deliver DSL to its ISP customers, then has made it 'uneconomical' to compete. Even more surprising, according to this ISP, a former US West employee states that the Bell is not paying for their own Internet service but is getting it subsidized. This is a clear example of monopoly abuse.

"Failed to offer DSL in our primary market area despite early promises to do so. We had a DSL connection and essentially NO customers for more than a year. I would not in good conscience advertise DSL when it was not available. More than a year later, after canceling our service and getting a full refund, US West is beginning to offer DSL in a limited area in our primary service area. Our experience with US West and DSL has been uniformly AWFUL. I currently do not offer DSL because the phone company (in my view) has made it deliberately uneconomical to compete in this arena. We have reports from a former US West employee that US West, by policy, is not making their internet arm pay their bills to US West, although they are being billed. She was told 'don't worry about it' and to 'ignore it' when she brought this to the attention of her supervisor. Part of her job, by the way (if I recall correctly), was collecting delinquent accounts."

But this is only one of the majority of ISPs who can't get DSL from the Bell.

An ISP using GTE states:

"Currently GTE has suspended all new ATM connection for DSL." (EDITOR NOTE: "ATM" is a network component vital to DSL services)

A Tennessee ISP using Sprint found that Sprint is only using their own product and won't sell it to the ISPs.

"Sprint says it will be a year before DSL is available in our area. That is a lie because they already have it!"

An ISP in Utah states:

“USWest promised Local DSL service by August 1998 and it's still not here and is no longer even forecasted in our area.”

An ISP in rural Texas using Southwestern Bell states:

“DSL not available.”

And an ISP in New Mexico states:

“US West lacks facilities throughout the 25% of the state that it services. We can rarely place an order that is not put on hold because the US West network is at capacity.”

3.2 Predatory Pricing By The Bell Company Is Another Inhibitor To ISPs Offering DSL

In December, 1999, New Networks Institute filed a Complaint with the Attorney General's office pertaining to the Bells predatory pricing of DSL. Based on data from two New York ISPs, Bwaynet and Panix, as well as using industry standards, we found that the Bell Atlantic's wholesale pricing for competitive ISPs is below cost, and there is virtually no way an ISP can sell the product and be profitable. The Complaint can be read at: <http://newnetworks.com/baadslscrewisp.htm>

Another New York ISP talking about Bell Atlantic DSL pricing found that it was not competitively offered to ISPs for resale.

"We have not even tried to do anything with DSL because not only can Bell Atlantic not provide DSL to 80+% of the area, but their pricing keeps us from being able to be competitive. So we can't say anything else about DSL.”

This exact same theme was echoed by a Washington ISP who uses US West.

"US West is finally beginning to offer DSL in our service area (a very small part of it) we are unable to offer it. They have cherry picked and so diluted the market there is no economical way for us to enter the current or projected market and compete. US West and the other ILECs are SELLING BELOW COST. The words 'predatory pricing' keep echoing in my mind."

3.3 There are a Litany of Problems for ISPs Offering DSL

This next exhibit highlights the responses for most of the DSL questions pertaining to the Bells' treatment of ISPs and their customers. As the chart shows, there are a litany of problems facing

the marketing of DSL and the interface with the Bell companies. On the average, about half of all ISPs who offer DSL have various problems.

For example,

- 71% of ISPs have had lost orders by the local phone company.
- 59% have had their customers “slammed” by the Bell (meaning that their customer was changed over to the local Bell without their permission.
- 63% of ISPs have had the Bell recommend their product over their current ISPs product.
- 53% have had their customer told they wouldn’t have problems if they switched to the Bell company product.

It should be noted that many of these problems are actually illegal acts done by the Bell against the Internet provider. For example, slamming is illegal, and making blatant anti-competitive statements about the Bell product over an ISP product while the customer is only ordering a second line are clear violations.

Responses to Questions Dealing with ISPs Deploying DSL

	Yes	No
55) We have documented evidence of our customers being given more rapid installation dates if they selected the phone company ISP instead of us:	24%	75%
56) Our DSL customers have experienced lost orders for their DSL lines by the local phone company:	71%	29%
57) Our DSL customers have been slammed in favor of the phone company-owned or Bell-owned ISP (uswest.net, ameritech.net, swbell.net, bellsouth.net, get.net, bellatlantic.net, pacbell.net, etc.) when DSL line service was finally installed:	59%	41%
58) Our DSL customers who were slammed experienced delays in getting this corrected.	43%	57%
59) We lost customers who decided to remain with the phone company after being slammed:	40%	60%
60) Our DSL customers have had local phone company representatives try to convince them to buy from or switch to the phone company ISP service when they called to place their DSL line order:	63%	37%
61) Our DSL customers encountered the following negative representatives when they called to place their DSL line order:		
<ul style="list-style-type: none"> • “I can’t test your line end to end if you don’t subscribe to the Bell-owned ISP service.” 	26%	74%
<ul style="list-style-type: none"> • “You wouldn’t have these problems if you used the Bell-owned ISP service.” 	53%	47%
<ul style="list-style-type: none"> • “You will get faster speeds with the Bell-owned ISP service.” 	47%	53%
<ul style="list-style-type: none"> • “You will get better support with the Bell-owned ISP service.” 	39%	61%
62) Our customers were told we were not on the list of DSL capable ISPs when in fact we were:	47%	53%
63) Our customers were told they could only qualify for free modems if they bought the phone company ISP service	47%	53%
64) Our customers must contact the phone company to find out if they are DSL loop qualified:	48%	52%
65) We can loop qualify our DSL customers ourselves:	64%	36%
66) Our customers were offered free DSL trials if they used the Bell-owned ISP service:	38%	63%

4.0 Harm to Internet Providers

While specific problems caused by the Bells may seem problematic to the running of an Internet service, the actual effects are seen in real financial losses, from extra staff time to fix the problems to actual loss of customers who leave, presumably because of these problems or the Bell's anti-competitive behaviors.

In the next question, 85% of all ISPs felt that that have lost business because of the Bells sub-standard customer services, or anti-competitive actions.

Question 68) The Baby Bells' impact on your business:

- We have lost business because of downed phonelines and busy signals.
- The Bells have taken business from us by suggesting their own services to our customers

An ISP in Missouri states of Southwestern Bell that they've cost them over one million dollars in problems.

"The service we have received has compromised our revenue so badly that we haven't been able to change to some other service. We've lost \$1 million in actual revenue not including any growth."

And from the responses, the monopoly is illegally using its monopoly franchise to hurt its competitors.

One US West ISP stated that US West's ISP regularly up-slammed by the Bell company.

"Dial up customers complaining about modem connections have been told to change to USWest ISP and they will get better service and lower prices."

Another ISP using a competitive CLEC, Covad, had the same problem.

"The Bell installer will talk up the Bell DSL service over the Covad service and gives unnecessary and confusing information to the end-user."

As one New Mexico ISP put it

"US West uses monopoly to compete for Internet customers. The repair department tries to sell US West services to our customers. The New Mexico network lacks facilities for virtually every expansion that we attempt to initiate. Meanwhile, US West does everything in its power to woo the Legislature to support whatever it proposes."

4.1 Effect on the ISP Customer due to Problems with the Local Bell

The Bells' action (or inactions) is a much more devastating problem to America's Digital Future, not just to the ISP is effected, but more so to the customer who ultimately suffers. In a related Complaint filed with the New York Attorney General Office of NY, with Internet providers Panix and Bwaynet, NNI documented that the problems surrounding DSL deployment directly effected the ISP's customers. To read the complaint go to:

<http://www.newnetworks.com/paycompensation.htm>

For example, when the ISP (with the CLEC) made an appointment with Bell Atlantic, clearly 30% of the time, Bell Atlantic never showed up to do the installation... and that installation was at the customer's home or office. It was the customer who ended up waiting ALL day for a phone company that never showed. Similarly, when an ISP's phone service improperly interrupted, it is the customer who can't use their service, and it is the customer who is inconvenienced as well.

5.0 Taking Actions Against the Bells

One of the indicators that this industry is having serious, unresolved problems is the amount of companies that have had to file complaints with the Public Service Commissions (sometimes written as PUC or PSC) to protect their interests.

However, it is also clear from the data the Commissions have not been able to fix the various problems presented. The findings show that 74% of ISPs have attempted to get help from their state Commissions regarding their problems with the local Bell. And of those:

- The majority, 63% of those who approached the Public Service Commission for help got no results.
- 17% are currently waiting for a decision
- and only 25% received help from the PUC that resolved their problems.

It is also clear from the responses that the ISPs are small and independent and have limited resources to take legal actions. And according to most ISPs, the Bells use their extensive power to protect their monopoly from complaints.

5.1 The Problem Of Getting Justice For The ISP Is Unfortunately, Multifaceted.

This abysmal track record on the part of the Public Service Commissions to step up to the plate and help to fix the problems are multifaceted..

They are:

- The PUC Is Not Up To The Challenge Of Taking On The Bells.
- The ISP May Not Be The "Customer of Record"
- In Some Cases, The PSC Simply Doesn't Have Enough Staff.

- In Most Cases It Simply Isn't A Fair Fight.
- Even The Legal Issues Are Unclear To The Public Service Commissions.

5.2 The PUC Is Not Up To The Challenge Of Taking On The Bells.

One ISP from Utah stated:

“When complaints are filed, USWest uses their power to get the complaints ignored or totally thrown out.”

One New York ISP found that the PSC was just worthless because they do not penalize the Bell for the problems.

“We’ve filed numerous complaints about service problems, from bad installs to over-billing on our phonebills. The PSC makes them come to meetings then nothing happens. They are worthless and have cost us thousands of dollars by their inaction.”

5.3 The ISP May Not Be The Customer of Record

The ISP is often not “the customer of record”-- i.e.; if the ISP goes through a CLEC, then the CLEC is the customer of record, even if the service is provided by the Bell company and they are the ones who are causing the problems. This issue of customer of record simply insulates the Bell from either the ISP or even the irate end-user.

As one ISP from Kentucky spoke about BellSouth and their CLEC:

“We can't file a complaint against them since the service in question is delivered by the CLEC. So we filed against them, so they would get on BellSouth's case . . . but instead we got a hysterical fit from the local CLEC manager who said, I quote ‘you don't understand who and what you're dealing with. . .you should just leave it all alone!’.”

In New Mexico, the same exact problem exists.

“US West recently chose to ignore a request for service and then when I filed a complaint with the NM Public Regulatory Commission they said that I was not their customer MCI was and they could not talk to me. They refused to install the lines for me and without the copper they provide I could not provide a service.”

5.4 In Some Cases, The PSC Simply Doesn't Have Enough Staff.

One ISP from Washington was told:

“The: PUC ["UTC" Utilities and Transportation Commission] told me, "take a number; we have more complaints in here than we have room for.”

Or as one ISP from New Mexico put it:

"In New Mexico the PRC has finally taken an interest in harnessing US West, but it does not have the manpower or the financial resources to do anything quickly."

5.5 In Most Cases It Simply Isn't A Fair Fight. The Bell companies have vast resources compared to the small ISP or the customer. One ISP from New York stated:

"We have told them of problems in the past, but never filed a formal complaint. We don't have the resources to pursue meglomaniacal ILECs (Incumbant Local Exchange Companies) who can put us out of business by hiring endless streams of lawyers who spew spin-doctored facts and irrelevant facts which serve only to muddy the waters. They can say anything they want..."

And one ISP fears retribution.

“When Complaints are made to state PUC, you end up in big trouble.”

5.6 Even The Legal Issues Are Unclear To The Public Service Commissions.

One ISP from Missouri, Southwestern Bell stated:

“They told us that they couldn't help because the service we get from Bell is non-tariffed and that we should watch our complaints because Bell might vary well give us notice and shut us off because of it non-tariffed status.”

As one ISP from Texas summed it up:

“Have not filed PUC complaint, but they are still pretty much useless.”

One ISP from Washington summed it this way:

"We have gotten satisfaction on some items, waiting (more than a year) on others, and considered it a lost cause on the rest."

6.0 Taking Legal Action Against The Bells.

For the most part, the ISPs have not taken legal actions through the courts primarily because they can't afford it. However, the overwhelming majority feel that legal action is warranted.

- 50% of those polled have not taken legal actions against the Bells because they couldn't afford it.
- 89% of those surveyed felt that there was sufficient grounds to take legal action

As one ISP put it about taking a law suit:

“We can't afford to. We are not a big company. We believe they have intentionally caused us to have substandard service in the past, we are terrified of retribution.”

However, there are some who believe that they have to take action. This ISP who uses BellSouth stated: "We have a pending complaint ready to file. The question is do we want to spend thousands of dollars in legal fees, hours of our time giving depositions in a Federal court, and have to wait for 5 years for the case to be settled. The answer is probably yes.”

Appendix 1: Definitions and Abbreviations

Bell Company	<p>In 1984, AT&T was broken up and seven large holding companies were created to control the original Bell phone companies. They were:</p> <ul style="list-style-type: none">• Ameritech• Bell Atlantic• BellSouth• NYNEX• Pacific Telesis• SBC Communications (originally Southwestern Bell)• US West
Bandwidth	<p>Bandwidth is a term that is used to describe how much or how fast content can be received or sent. Think of it as a pipe carrying water. The larger the pipe, the more water it can deliver.</p>
CLEC	<p><i>“Competitive Local Exchange Company” is a local phone company that offers a competitive local phone service. This includes data and or voice services.</i></p>
CO	<p>“Central Office” is an aggregator of local phone lines in a neighborhood.</p>
DSL	<p>“Digital Subscriber Line” is a generic term for many types of services. For example, ADSL is the most common. Asymmetric DSL is a service that is most one-directional, i.e., from the outside world to the user is much faster than a customer sending information.</p>
ILEC or LEC	<p>An “Incumbent Local Exchange Company” is a term to describe any monopoly local phone company, including the Bells. However, there are over 1300+ non Bell local phone companies in America, accounting for approximately 20% of local phone services. GTE and Sprint are two of the largest LECs.</p>

- ISP** *“Internet Service Provider” is a company that offers Internet service or web provisioning to ‘end-users’ (i.e., customers) and who maintains phone/data lines.*
- Local Reseller** A company that purchases local phone service at a discount and resells it to customers.
- Long Distance** A Long Distance company sells long distance services, which is a phone service that crosses state lines. A call from New York to New Jersey is Long Distance.
- Network Switch** When calls are transferred between Central Offices or connected to long distance or data services, they go through some sort of network switch, a device that routes calls.
- T1** Pronounced “Tee One”, this is a standard business service that gives 24 lines of service in a bundle. However, this service can also be used as having the capacity of these 24 lines simultaneously. It can be sold as “fractional”, meaning that the customer buys a smaller percentage of the packaged lines.
- Toll Call** A Toll Call is a phone call that stays within a geographic boundary, known as a “LATA”, which is similar to an ‘area code’, or In-state, which is a call that doesn’t cross state lines.

Appendix 2 THE SURVEY DETAILS

- 1) Total Respondents:** The survey garnered 84 useful and completed respondents.
- 2) The Respondents were ALL SMALL INDEPENDENT ISPs.** The breakout: 67% of the respondents worked for small ISPs who have under ten staffers, 27% were under 50 staffers, (The remainder didn’t answer the question.)
- 3) States Covered:** Two ISPs use national networks that give them access to 48 states, continental US and approx. 25% offer service in multiple states. However, the most accurate assessment would be that the survey covered 34 states and most companies are only doing business in a specific state.

States Covered

Tennessee	North Dakota	New Mexico
Oregon	New York	Utah
Washington	California	Montana

Nebraska	Kentucky	Minnesota
Wyoming	Colorado	Indiana
Maine	Oklahoma	Kentucky
Louisiana	Minnesota	Florida
Arizona	Massachusetts	Virginia
South Dakota	Georgia	Illinois
Nebraska	Massachusetts.	South Dakota
Michigan	Connecticut	New Jersey
Nevada		

Some ISPs have multiple states listed: One claims “California, Oregon, Washington, Nevada, Indiana, Illinois, Florida.”

4) RBOC and GTE Representation: All Regional Bells are represented. However, the survey drew the most response from US West and SBC.

RBOC REPRESENTATION, adding Multiple listings

US West	50
SBC	27
GTE	17
BellSouth	7
Bell Atlantic	7
Ameritech	5
Pac Bell	3

NOTE: 17 companies use GTE, but only 5 have them as the exclusive local phone company.

5) *Largest State Accounting:*

US West has the most states represented especially counting multiples. Texas had the largest response.

Largest State Accounting

23	Texas
----	-------

12	New Mexico
11	Washington
7	Utah
4	Wyoming

CERTIFICATE OF SERVICE

I, Queen McIntosh, certify that I have, on this 4thth day of April, 2000, caused a true and correct copy of the foregoing "Reply Comments of The Commercial Internet Exchange Association" to be hand delivered to:

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